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17-P-1324

Appeals Court

COMMONWEALTH vs. RONALD N. DUPRE.

No. 17-P-1324. June 4, 2018.

Moped. Motor Vehicle, Moped, Operating under the influence.

The defendant appeals from his conviction of operating a motor vehicle while under the influence of alcohol, fifth offense, on the ground that statutory definitions of "motor vehicle" are inconsistent and therefore unconstitutionally vague. Specifically, the defendant argues that his vehicle met the definition of a "motorized bicycle" under G. L. c. 90, § 1. As G. L. c. 90, § 1, as amended through St. 1976, c. 261, § 3, further states that "[t]he definition of 'Motor vehicles' shall not include motorized bicycles," the defendant claims it is unclear whether his vehicle could be deemed a motor vehicle for purposes of prosecution under G. L. c. 90, § 24.

This court has already addressed the question, determining that the Legislature's choice to make "motorized bicycles," as defined in § 1, subject to the Commonwealth's traffic laws, see G. L. c. 90, § 1B, "manifested its intention to make those portions of c. 90 that are concerned with operation, such as . . . § 24 . . . , also apply to operators of motorized bicycles." Commonwealth v. Griswold, 17 Mass. App. Ct. 461, 462 (1984). Our construction in Griswold, which is consistent with the introductory paragraph of G. L. c. 90, § 1, eliminates any vagueness concern. See Commonwealth v. Gallant, 373 Mass. 577, 581 (1977) ("A sufficiently definite warning may be achieved by judicial construction").<sup>1</sup>

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<sup>1</sup> Although he failed to file a notice of appeal from the denial of his motion for new trial, the defendant further

Judgment affirmed.

Joseph Visone for the defendant.

Susan M. Oftring, Assistant District Attorney, for the Commonwealth.

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asserts that the motion should have been allowed on the ground that his trial counsel was ineffective for failing to adduce evidence to properly challenge whether the defendant was operating a "motor vehicle." For the reasons we have explained, any such challenge would have been unavailing, and counsel's failure to raise the issue accordingly neither fell below the performance expected from competent counsel nor deprived the defendant of an available ground of defense. See Commonwealth v. Saferian, 366 Mass. 89, 96 (1974).